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IN THE  
**Supreme Court of the United States**

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TYRONE LEAK and ALAN DENNIS,

*Petitioners,*

v.

STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF  
CORRECTIONS; JACK TERHUNE; STEVEN PINCHAK,  
Administrator of East Jersey State Prison; PATRICK  
ARVONIO; STEVEN MAGGI, Chief of Correctional Officers  
East Jersey State Prison; JOHN DOES 1-20,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The Third Circuit affirmed the District Court of New Jersey's Order granting the employer's Motion for Summary Judgment in a case that alleges an employer with both creating and maintaining a racially hostile work environment against black Correctional Officers and also engaging in a variety of retaliatory acts in direct response to the filing of the lawsuit.

The two questions presented are:

1. In the instance of retaliation when an employee is transferred, whether the physical change of the location of one's employment constitutes a retaliatory action under the Civil Rights Laws and that such a physical change of the location is serious and tangible enough to alter an employee's terms, conditions or privileges of employment? (*See Weston v. Commonwealth of Pennsylvania*, 251 F3d 420 (3d Cir. 2001))
2. In a lawsuit alleging various Civil Rights violations, should the Court look at the totality of the circumstances when determining whether a hostile work environment and retaliatory actions by the employer exist permitting all issues to be determined by the Jury, including credibility as to what constitutes a hostile work environment?

**LIST OF PARTIES**

The parties below are listed in the caption other than Plaintiffs Lori Scott, David Jones, Abubakr Sadiq, William Washington, Herbert Bacon, Pierce Graham, Joy Hill, Gregory Spinner, Hatha Baraka, Joan Bates, Gerard Schenck, Russell Peterson and Michael Lane, who have settled and Plaintiffs Trevor Todd and Robert Nelson who were voluntarily dismissed early on in the litigation. The Plaintiff-Petitioners are Alan Dennis and Tyrone Leak.

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## **OPINION BELOW**

The Opinion of the United States Court of Appeals for the Third Circuit was decided on August 01, 2005, Docket No. 04-3446.

## **STATEMENT OF JURISDICTION**

This Court's Jurisdiction is invoked under 28 U.S.C. § 1254(1). The Third Circuit's Opinion was rendered on August 01, 2005, with Judgment being on August 01, 2005, in favor of the Respondent and affirming the Judgment of the United States District Court.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Title 42 U.S.C. §§ 1981, 1983 and 1985 and Title VII of the Civil Rights Act.

## **STATEMENT OF THE CASE**

On March 11, 1999 Petitioners filed a Complaint in the U.S. District Court for the District of New Jersey, alleging various Civil Rights violations arising out of their employment with the State of New Jersey, Department of Corrections (NJDOC) (Complaint). An Amended Complaint was filed on October 07, 1999 by the Petitioners (Amended Complaint). Respondents-Defendants filed an Answer to the Amended Complaint on November 12, 1999. (Answer).

The Petitioners filed a Second Amended Complaint on December 18, 2000, which incorporated various acts of retaliation, which occurred after the filing of the initial Complaint. (Second Amended Complaint).

Petitioners-Plaintiffs, Alan Dennis and Tyrone Leak, are two African-Americans who were employed as Correctional Officers with the New Jersey Department of Corrections at East Jersey State Prison (hereinafter referred to as EJSP).

The Respondent-Defendant Steven Maggi was Chief of EJSP in charge of the Correctional Officers at EJSP. The Respondent-Defendant Steven Pinchak was the Administrator of EJSP who had overall supervisory responsibility at EJSP.

Both Petitioners stated that they were subjected to a hostile work environment at EJSP, along with complaints of racial discrimination, harassment and retaliation.

As set forth in the Complaint, beginning in December 1998, Petitioners became aware of an increase in racial hostilities at EJSP. Among the acts were the following:

1. Black officers charged with disciplinary violations while similarly situated white officers were either not charged or given reductions in their charges.
2. Black officers witnessing white officers assaulting and beating black inmates for no other reason than the race of the inmate.
3. Black officers, who filed grievances as to racial discrimination and/or racial harassment, did not have those grievances properly investigated.
4. Observations of racial comments on the walls in the Correctional Officer's bathrooms and lockers.

5. White officers calling inmates racial slurs, including "niggers" and "shines".
6. White officers possessing and circulating applications for membership in the KKK at EJSP.

In addition, pursuant to the Holland Consent Decree (an Order entered into by the U.S. District Court for the Third Circuit in a prior case), there exists an internal process similar to EEOC at the NJDOC as to filing complaints of such nature (known as EED Complaints). Both Petitioners filed EED Complaints as to some of the incidents arising out of the hostile work environment/retaliation existing at EJSP.

Petitioner Dennis filed seven (7) EED Complaints as follows:

1. March 27, 1999 – Petitioner's altercations with white Officers Godown and House.
2. April 01, 1999 – Incident concerning Petitioner's re-assignment of a Highway Detail.
3. April 17, 1999 – A white supervisor disconnecting Petitioner's telephone call with his wife.
4. April 18, 1999 – Petitioner's restricted access to EJSP's main facility, after he complained of retaliation at the main facility.
5. June 01, 1999 – A white officer's threats towards Petitioner.

6. June 01, 1999 – White Correctional Officers' sale of Chief Maggi T-Shirts on EJSP property.
7. June 01, 1999 – EED's investigator's improper questioning of Petitioner.

Petitioner Leak filed three (3) EED Complaints:

1. March 26, 1999 – Set-up of Petitioner by his supervisors and subsequent disciplinary action against him arising out of video taping of the Mess Hall at EJSP.
2. April 24, 1999 – Improper disciplinary charges filed against petitioner.
3. September 08, 1999 – A threat made by Sgt. Cifelli (a white supervisor) to petitioner.

In particular, as to the March 27, 1999 incident, the Petitioner Dennis was re-assigned out of the main facility at EJSP due to a verbal altercation with Officer Godown, a white officer. The disparate treatment was that the Petitioner, a black officer, was re-assigned, while the white officer was not.

The Petitioners Dennis and Leak on May 20, 1999 filed internal reports as to the selling of T-Shirts at EJSP. As per EED's investigation, Petitioners were to be transferred out of EJSP due to safety concerns, with Petitioner Dennis being transferred to Northern State Prison and Petitioner Leak being transferred to Mountainview State Prison.